

APPEAL NO. 023281  
FILED FEBRUARY 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 29, 2002. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to or include left peroneal nerve dysfunction and that she did not have disability resulting from the compensable injury sustained on \_\_\_\_\_. The claimant appealed the hearing officer's decision. No response was received from the respondent (carrier).

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on November 4, 2002. The claimant states in her appeal that she received the hearing officer's decision on November 7, 2001, which we conclude is a typographical error and that she meant to write November 7, 2002. The 15th day after the claimant's date of receipt of November 7, 2002, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was December 3, 2002, and the 20th day was December 10, 2002. The claimant's appeal is not dated and the envelope in which it was mailed to the Commission is postmarked December 27, 2002. The claimant's appeal was received by the Commission on December 31, 2002. We note that the claimant attached to her appeal a copy of an envelope postmarked November 29, 2002, addressed to a Commission field office, however, the

post office returned the envelope to the claimant for additional postage. The claimant indicates that her appeal was sent back to her. When a party's appeal is returned for insufficient postage and is remailed to the Commission, the Appeals Panel uses the postmark on the remailing to determine if the appeal was timely mailed. Texas Workers' Compensation Commission Appeal No. 010216, decided March 5, 2001. The claimant's appeal is untimely since it was remailed to the Commission after December 3, 2002, and was not received by the Commission until December 31, 2002.

The hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge